
SENATE BILL No. 516

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-42-4.

Synopsis: Sex offenders. Provides that a person commits child molesting if the person has sexual intercourse with or fondles a child who is less than 12 years of age and is at least five years younger than the person. (Under current law, the offense is committed by having sexual intercourse with or fondling a child less than 14 years of age.) Provides that a person commits sexual misconduct with a minor if the person is at least 18 years of age and has sexual intercourse with or fondles a child at least 12 but less than 16 years of age who is at least five years younger than the person. (Under current law, the offense is committed when a person at least 18 years of age has sexual intercourse with or fondles a child at least 14 but less than 16 years of age.) Creates a defense to certain prosecutions for: (1) child exploitation; (2) possession of child pornography; (3) vicarious sexual gratification; and (4) performing sexual conduct in the presence of a minor.

Effective: Upon passage.

Bowser

January 23, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 516

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-42-4-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A person
3 who, with a child **who is** under ~~fourteen (14)~~ **twelve (12)** years of age
4 **and is at least five (5) years younger than the person**, performs or
5 submits to sexual intercourse or deviate sexual conduct commits child
6 molesting, a Class B felony. However, the offense is a Class A felony
7 if:
8 (1) it is committed by a person at least twenty-one (21) years of
9 age;
10 (2) it is committed by using or threatening the use of deadly force
11 or while armed with a deadly weapon;
12 (3) it results in serious bodily injury; or
13 (4) the commission of the offense is facilitated by furnishing the
14 victim, without the victim's knowledge, with a drug (as defined in
15 IC 16-42-19-2(1)) or a controlled substance (as defined in
16 IC 35-48-1-9) or knowing that the victim was furnished with the
17 drug or controlled substance without the victim's knowledge.



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(b) A person who, with a child **who is under fourteen (14) twelve (12) years of age and is at least five (5) years younger than the person**, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony. However, the offense is a Class A felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon; or
- (3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) It is a defense that the accused person reasonably believed that the child was sixteen (16) years of age or older at the time of the conduct.

SECTION 2. IC 35-42-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) As used in this section:

"Disseminate" means to transfer possession for free or for a consideration.

"Matter" has the same meaning as in IC 35-49-1-3.

"Performance" has the same meaning as in IC 35-49-1-7.

"Sexual conduct" means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sado-masochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

- (1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;
- (2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or
- (3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than

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1 eighteen (18) years of age;
2 commits child exploitation, a Class C felony.

3 (c) A person who knowingly or intentionally possesses:

- 4 (1) a picture;
5 (2) a drawing;
6 (3) a photograph;
7 (4) a negative image;
8 (5) undeveloped film;
9 (6) a motion picture;
10 (7) a videotape;
11 (8) a digitized image; or
12 (9) any pictorial representation;

13 that depicts or describes sexual conduct by a child who is less than
14 sixteen (16) years of age or appears to be less than sixteen (16) years
15 of age and that lacks serious literary, artistic, political, or scientific
16 value commits possession of child pornography, a Class D felony.

17 (d) Subsections (b) and (c) do not apply to a bona fide school,
18 museum, or public library that qualifies for certain property tax
19 exemptions under IC 6-1.1-10, or to an employee of ~~such a~~ **the** school,
20 museum, or public library acting within the scope of the employee's
21 employment when the possession of the listed materials are for
22 legitimate scientific or educational purposes.

23 **(e) It is a defense to a prosecution under subsections (b) and (c)**
24 **that the person:**

- 25 **(1) is less than five (5) years older than the child; and**
26 **(2) the person and the child are dating or have dated.**

27 SECTION 3. IC 35-42-4-5 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A person
29 eighteen (18) years of age or older who knowingly or intentionally
30 directs, aids, induces, or causes a child under the age of sixteen (16) to
31 touch or fondle himself or another child under the age of sixteen (16)
32 with intent to arouse or satisfy the sexual desires of a child or the older
33 person commits vicarious sexual gratification, a Class D felony.
34 However, the offense is:

- 35 (1) a Class C felony if a child involved in the offense is under the
36 age of fourteen (14);
37 (2) a Class B felony if:
38 (A) the offense is committed by using or threatening the use of
39 deadly force or while armed with a deadly weapon; or
40 (B) the commission of the offense is facilitated by furnishing
41 the victim, without the victim's knowledge, with a drug (as
42 defined in IC 16-42-19-2(1)) or a controlled substance (as

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defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

(3) a Class A felony if it results in serious bodily injury.

(b) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to:

(1) engage in sexual intercourse with another child under sixteen (16) years of age;

(2) engage in sexual conduct with an animal other than a human being; or

(3) engage in deviate sexual conduct with another person;

with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class C felony. However, the offense is a Class B felony if any child involved in the offense is less than fourteen (14) years of age, and it is a Class A felony if the offense is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person eighteen (18) years of age or older who knowingly or intentionally:

(1) engages in sexual intercourse;

(2) engages in deviate sexual conduct; or

(3) touches or fondles the person's own body;

in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits performing sexual conduct in the presence of a minor, a Class D felony.

(d) Unless the person is charged with a Class A or Class B felony, it is a defense to a prosecution under this section that:

(1) the person is less than five (5) years older than the child; and

(2) the person and the child are dating or have dated.

SECTION 4. IC 35-42-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) A person at least eighteen (18) years of age who, with a child at least ~~fourteen (14)~~ **twelve (12)** years of age but less than sixteen (16) years of age **who is at least five (5) years younger than the person,** performs or submits

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to sexual intercourse or deviate sexual conduct commits sexual misconduct with a minor, a Class C felony. However, the offense is:

(1) a Class B felony if it is committed by a person at least twenty-one (21) years of age; and

(2) a Class A felony if it is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person at least eighteen (18) years of age who, with a child at least ~~fourteen (14)~~ **twelve (12)** years of age but less than sixteen (16) years of age **who is at least five (5) years younger than the person**, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Class D felony. However, the offense is:

(1) a Class C felony if it is committed by a person at least twenty-one (21) years of age; and

(2) a Class B felony if it is committed by using or threatening the use of deadly force, while armed with a deadly weapon, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(d) It is a defense that the child is or has ever been married. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

SECTION 5. [EFFECTIVE UPON PASSAGE] IC 35-42-4-3, IC 35-42-4-4, IC 35-42-4-5, and IC 35-42-4-9, all as amended by this act, apply to all cases that have not been adjudicated as of the effective date of this act.

SECTION 6. An emergency is declared for this act.

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